

8 February 2012

Ms Melanie Brandis
Communications Group
Australian Competition and Consumer Commission
Email: melanie.brandis@acc.gov.au

Copy to:

Ms Sara Afaghi
Communications Group
Australian Competition and Consumer Commission
Email: sara.afaghi@acc.gov.au

Confidential Communication

Dear Ms Brandis

Discussion Paper into whether wholesale ADSL services should be declared under Part XIC of the Competition and Consumer Act 2010 – Access Seekers' Submissions

I refer to the Commission's "Discussion Paper into whether wholesale ADSL services should be declared under Part XIC of the Competition and Consumer Act 2010", dated December 2011 (**Discussion Paper**) and to the submissions received from Herbert Geer (on behalf of a number of access seekers), Macquarie, Optus and TPG available on the Commission's website (**the Submissions**).

Telstra considers that the Submissions contain factual inaccuracies to which Telstra wishes to draw the Commission's attention. These inaccuracies and Telstra's response are set out below.

Telstra is providing this letter to the Commission on a confidential basis at this time. If the Commission wishes to publish this letter, please contact us to discuss redaction of the confidential material it contains.

1 Herbert Geer's submission

Herbert Geer's submission states that:

*"Internode has instructed us that the Ordering and Provisioning Annex to CRA 71D contains a documented 30GB usage cap per service. Telstra can also impose speed restrictions on customers downstream of a RIM if they claim that the backhaul from the RIM is congested. Internode has checked customers on the list of speed restricted ports against its usage data and it appears that Telstra imposes such speed restrictions routinely as soon as a customer reaches 30GB in a month. We are not aware of any similar limitations being placed on Telstra's retail customers."*¹

¹ Herbert Geer's submission, p 4.

First, Herbert Geer's statement that a 30GB usage cap per service is set out in the Ordering and Provisioning Annex to CRA 71D is incorrect. There is no such restriction in that Annex.

Second, Herbert Geer's statement that Telstra imposes a 30GB usage cap per service (irrespective of the document in which such a cap is contained) is incorrect. [c-i-c commences] [c-i-c] [c-i-c ends] Telstra may suspend, limit or cancel a service if Telstra considers there to be excessive or unusual usage of the service. Excessive or unusual usage includes (by way of example), if an end user is uploading more data than they are downloading, and the total data uploaded and downloaded exceeds 30GB.

By way of background, Telstra imposes such a limitation in order to prevent its backhaul infrastructure from collapsing under the weight of demand. Such a limitation is also necessary, given that at a wholesale level (unlike at a retail level), Telstra does not impose any download restrictions. Rather, Telstra's wholesale customers impose their own download restrictions. Thus, Telstra's wholesale customers could offer 'unlimited' download plans. In that regard, TPG notes in its submission that it does so.

Further, the example set out above accords with the fact that the Service is an 'internet grade, best efforts' service intended for consumer, as opposed to business, end users. In Telstra's view, end users who are uploading more than they are downloading and who exceed 30GB in data transfers are unlikely to be consumer end users in view of the unusually high volume of uploaded data.

Third, Herbert Geer's statement that Telstra imposes such a limitation 'routinely' is incorrect. In fact, Telstra does not impose such limitations against wholesale customers.

Fourth, Herbert Geer's statement that Telstra can impose speed restrictions on customers downstream of a RIM if they claim that the backhaul from the RIM is congested, requires clarification. Telstra 'shapes' or 'throttles down' 8Mbps services on congested DSLAMs as one of a range of measures introduced to manage congestion and limited backhaul availability. Telstra has subsequently introduced a range of other measures to reduce the need to 'shape' or 'throttle down', including:

- hierarchical round robin (**HRR**) software, which effectively limits the speeds of all services on a congested DSLAM;
- a significant program of backhaul infrastructure investment; and
- relocation of services from congested DSLAMs to less congested DSLAMs.

[c-i-c commences] [c-i-c] [c-i-c ends]

Fifth, Herbert Geer's statement that it is unaware of whether similar limitations are placed on Telstra's retail customers requires clarification. If a DSLAM is congested, all (i.e. both retail and wholesale) services are subject to 'shaping' or 'throttling down'.

2 Optus' submission

Optus' submission states that:

“One of the conditions Telstra has placed on Optus is that Optus must purchase both wholesale DSL and wholesale line rental as a bundled service.”²

This again is inaccurate. By way of clarification, because of Telstra's core systems and platform design, ADSL services can only be provisioned where a telephone line has been provisioned at the end-user's premises. That core systems/platform limitation applies to both wholesale and retail services.

[c-i-c commences] **[c-i-c]** **[c-i-c ends]** Although some wholesale customers may request bundling, it is not imposed as a “condition” by Telstra.

3 Submissions regarding multicasting

A number of access seekers make submissions regarding the fact that Telstra does not offer multicasting facilities to its wholesale customers.³

In that regard, Telstra does not offer multicasting technology to or utilise multicasting technology for *any* of its customers on its shared DSL network, whether they are retail or wholesale customers.

Please contact Pauline Crichton on (03) 8649 2010 or Pauline.Crichton@team.telstra.com should you have any queries.

Yours sincerely,

Jane van Beelen
Executive Director – Regulatory Affairs
Strategy & Corporate Services

² Optus' submission, p 5.

³ See for example Herbert Geer's submission, pages 5 and 7, in which Herbert Geer states that products such as IPTV and multi-media content cannot be economically provided to end-users as a result of Telstra's inability to multicast; Macquarie's submission, p 3, in which Macquarie states that it is concerned with Telstra's limits on the use of ADSL for emerging bandwidth hungry end-user applications; TPG's submission, p 3, in which TPG states that Telstra does not permit wholesale customers to access a multicast facility.